U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Y-P-

DATE: OCT. 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an artist, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not submitted properly certified English language translations of his documents.

On appeal, the Petitioner submits a brief maintaining that he provided complete and accurate certified English language translations for his documents.

Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* In denying the petition, the Director stated: "Because you did not offer properly certified English language translations identifying the corresponding foreign language documents, we cannot meaningfully determine whether the translated material is accurate and thus supports your claims."

Our review of the record indicates the Petitioner provided "Certificate[s] of Accuracy" that immediately preceded the English language translations for his Chinese language documents.[1] In addition, many of the Petitioner's documents were in English and did not require a translation.[2] While we acknowledge the Director's concern that the Petitioner's Certificates of Accuracy did not list the specific documents they accompanied, these certifications and their accompanying English language translations sufficiently comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the Director's decision does not present a proper basis for denial. The Director should

[1] These signed and notarized certificates stated: "This is to certify that my name is [redacted] and I am competent in both Chinese and English and the attached translation from Chinese to English is accurate and complete to the best of my knowledge."

[2] For example, the letters of support from [redacted], [redacted], and [redacted] were all written in English. Also, several of the Petitioner's other documents included duplicate sections with both English and Chinese text.

have evaluated both the documents properly translated from Chinese and those in the English language.

Because the Director did not render a determination as to whether the Petitioner has received a major, internationally recognized award or satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we are remanding for him to consider whether the Petitioner has met his burden of proof with respect to these criteria. Furthermore, if the Director determines that the Petitioner meets these initial evidence requirements, he should then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the Petitioner is among the small percentage at the very top of his field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. CONCLUSION

We are remanding the petition for the Director to determine if the Petitioner has demonstrated eligibility for classification as an individual of extraordinary ability in the arts. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.

Cite as *Matter of Y-P-*, ID# 5107130 (AAO Oct. 2, 2019)